No. 86 1703

Supreme Court, U.S.
FILED
APR 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1987

KENNETH LANCASTER,

Petitioner,

vs.

BUERKLE BUICK HONDA CO.

Respondent.

Petition for a Writ of Certiorari
to the United States Supreme Court
From the Eighth Circuit Court of Appeals

APPENDIX

NEIL P. CONVERY
Suite 106 Riverwood Place
880 Sibley Memorial Highway
Saint Paul, Minnesota 55118
(612) 450-0901

Attorney for Petitioner

1987-Executeam Companies, Inc., 93 W. Little Canada Rd., St. Paul, MN 55117-(612)483-8793/1-800-328-8322

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Appendices

A. Kenneth Lancaster v. Buerkle Buick Honda Co., No. 86-5020 (8th Cir. Jan. 21, 1987) 42 F.E.P. Cases (BNA) 1472, 809 F. 2d 539 (8th Cir. 1987). 1a

B. Kenneth Lancaster v. Buerkle Buick Honda Co. Civ. No. 4-84-1060 (Dist. Minn. Nov. 27, 1985) . 5a

Appendix "A"

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 86-5020

Kenneth Lancaster,	*	
	*	
Appellant,	*	
	*	
v.	*	Appeal from the United
	*	States District Court for
Buerkle Buick Honda Co.,	*	the District
	*	of Minnesota
Appellee.		

Submitted: December 10, 1986
Filed: January 21, 1987

Before ROSS and FAGG, Circuit Judges, and HANSON,* Senior District Judge

FAGG, Circuit Judge.

Kenneth Lancaster appeals the district court's entry of summary judgment in favor of Buerkle Buick Honda Co. (Buerkle Buick). We affirm.

Lancaster began work for Buerkle Buick in 1971 as a service manager. On December 30, 1983, at the age of fifty-three, Lancaster's employment was terminated by Buerkle Buick. Lancaster claims he was terminated because of his age. Buerkle Buick maintains the decision was a result of Lancaster's unsatisfactory work perfor-

*The HONORABLE WILLIAM C. HANSON, Senior United States District Judge for the Northern and Southern Districts of Iowa, sitting by designation.

mance and the recommendation of an independent consulting firm in connection with reorganization of the service department.

After his termination Lancaster read and signed a termination agreement. The agreement obligated Buerkle Buick to pay Lancaster nearly $39,000 in severance pay and to pay six months medical insurance premiums for Lancaster. Buerkle Buick also agreed not to restrict Lancaster's right to work for a competitor and not to contest any claim by Lancaster for unemployment compensation. In exchange Lancaster agreed to cooperate in any related audit of Buerkle Buick and to preserve the confidentiality of information learned during his employment. Lancaster also agreed to release Buerkle Buick from "each and every claim of any kind *** resulting from [his] termination of employment."

Approximately nine months after he was terminated Lancaster filed this action in district court claiming the release was invalid and setting out various claimed violations by Buerkle Buick of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621-634, and the Employee Retirement Income Security Program (ERISA), 29 U.S.C. §§ 1001-1461. Lancaster also made claims for misrepresentation. The district court granted Buerkle Buick's motion for summary judgment, finding the termination agreement contained a valid and enforceable release barring Lancaster's suit.

Lancaster initially argues he cannot release his ADEA claim. The ADEA incorporated by reference the enforcement provisions of the Fair Labor Standards Act. (FLSA). *See* 29 U.S.C. § 626(b). Both the FLSA and the ADEA are silent on whether statutory claims may be privately released. The FLSA, however, has been interpreted to prohibit waiver through private releases of certain FLSA statutory coverages and rights. *See, e.g. Tony & Susan*

Alamo Found. v. Secretary of Labor, 471 U.S. 290, 302 (1985); *Barrentine v. Arkansas-Best Freight System, Inc.,* 450 U.S. 728, 745 (1981); *D.A. Schulte, Inc. v. Gangi,* 328 U.S. 108, 114 (1946); *Brooklyn Sav. Bank v. O'Neil,* 324 U.S. 697, 707 (1945). By implication, Lancaster argues, an employee's statutory rights under the ADEA are similarly not waivable through an unsupervised private release. We disagree.

This court has recently held ADEA claims involving bona fide factual disputes over the intent and motive of an employer for a termination may be validly settled in the manner undertaken here by Lancaster and Buerkle Buick. *Moore v. McGraw Edison Co.,* 804 F.2d 1026, 1033 (8th Cir. 1986); *see also Runyan v. National Cash Register Corp.,* 787 F.2d 1039 (6th Cir.) (en banc), *cert. denied,* 107S. Ct. 178 (1986); 50 Fed Reg. 40,870-71 (1985). *Moore* controls this case and permits the unsupervised release of Lancaster's ADEA claim.

Lancaster next argues his ADEA claim is not barred because the termination agreement fails to mention expressly any release of claims under the ADEA. *Moore* does not require the termination agreement specifically to mention the ADEA. *See Moore,* 804 F.2d at 1033; *see also Runyan,* 787 F.2d at 1044 n.10. We conclude Lancaster's broad release of all claims resulting from his termination also releases his ADEA claim.

Finally, Lancaster argues the termination agreement does not bar this suit because he did not knowingly and willingly release his employment-related claims. In determining whether the release was knowingly and voluntarily given, "we apply ordinary contract principles." *Runyan,* 787 F.2d at 1044 n.10. The undisputed facts do not support Lancaster's argument.

Lancaster was first presented with the termination agreement on December 30, 1983, but did not sign it until

January 4, 1984. In the interim he chose not to consult an attorney. Lancaster admits he read the agreement and considered its terms before signing. The agreement covers less than two typewritten pages, is written in clear and simple language, and unambiguously releases all of his claims relating to termination of his employment. The agreement contains no ultimatums or deadlines for its acceptance. Lancaster admittedly had input into the terms of the agreement and in fact negotiated significant favorable additions to it. Lancaster was a well-paid management employee who has experience in business and who has signed numerous contracts in his lifetime.

Even viewing these facts with the benefit of all reasonable inferences in the light most favorable to Lancaster, there is no genuine issue of material fact with regard to the basic facts underlying the making of the termination agreement. Lancaster made no showing Buerkle Buick was guilty of exploitation or over-reaching in these circumstances. Thus, we conclude the district court correctly determined the parties knowingly and voluntarily entered into the termination agreement and that Lancaster released all of his employment-related claims.

Accordingly, the district court's entry of summary judgment in favor of Buerkle Buick is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

Appendix "B"

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Kenneth Lancaster,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Memorandum Opinion
	)	and Order
Buerkle Buick Honda Co.,	)	
	)	Civil No. 4-84-1060
Defendant.		

NEIL P. CONVERY, Esq. Rivard, Convery & Associates, 1000 Northern Federal Building, St. Paul, MN 55102, appeared on behalf of plaintiff.

GREGORY J. STENMOE, Esq., Briggs & Morgan, 2400 IDS Center, Minneapolis, MN 55402, appeared on behalf of defendant.

Plaintiff Kenneth Lancaster brought this action against defendant Buerkle Buick Honda Co., (Buerkle) alleging age discrimination in violation of the Age Discrimination in Employment Act (ADEA), 29, U.S.C. §§ 621-634, violations of the Employee Retirement Income Security Program (ERISA), 29 U.S.C. §§ 1001-1461, breach of an implied convenant of good faith and fair dealing, and misrepresentation. He seeks injunctive relief as well as compensatory and punitive damages, interest and attorney's fees. Jurisdiction is alleged under 28 U.S.C.

§§1331, 1337, 29 U.S.C. §216(b), and 28 U.S.C. §§ 2201, 2202. The matter is now before the court upon defendant's motion for summary judgment on all counts, or alternatively, for partial summary judgment.

Background

The facts relevant to this motion are essentially undisputed and are as follows. Plaintiff began to work for defendant on July 1, 1971 as a service manager. He claims that he was induced by Buerkle to leave his previous employment with General Motors. Plaintiff then worked for Buerkle for 13 years. At the age of 53, he was notified of his termination by David Calderwood, Buerkle's general manager. Defendant states that the decision to terminate plaintiff was based upon the recommendations of an independent consulting firm in connection with a reorganization of the entire service department. Plaintiff believes that the decision was based on his age.

Plaintiff was notified of his termination on Friday, December 30, 1983. He was given a letter of termination and a letter of resignation that offered six months' severance pay in exchange for a release. Plaintiff states that he knew that he was terminated, but he asked to take the documents home to think the matter over. He was told that "the decision had already been made" and that there "was no reason" for him to take the letters. Lancaster depo. at 120. The owner of the dealership, William Buerkle, joined the meeting between plaintiff and Calderwood. Plaintiff then told Buerkle and Calderwood that 6 months' severance pay was inadequate. Plaintiff states that Buerkle became quite angry at that point. Plaintiff then left the room to receive a service call and Calderwood told him subsequently that he would receive a year's severance pay.

On January 4, 1984, Calderwood met with the plaintiff at his home, bringing a check and a revised separation

agreement and release. In the interim, plaintiff did not contact a lawyer and asserts that he did not do so because he believed it would not have helped. Plaintiff states that because of the New Year's holiday he did not have an opportunity to consult with an attorney even if he had been given the documents.

At plaintiff's request, the following changes were added to the agreement before he signed it:

1. Defendant agreed to increase severance pay from six months to one year, totalling $38,972.50.
2. Defendant agreed to change the base rate for one year's severance pay from 1983 to 1984, a higher amount.
3. Defendant agreed not to contest any claim for unemployment compensation, even though plaintiff was receiving one year's salary as severance pay.
4. Defendant agreed to pay plaintiff's medical insurance premiums for six months.

Calderwood aff. The brief 1½ page separation agreement and release signed by the plaintiff provides in part:

> You hereby release the company, its officers and employees from each and every claim of any kind which you may have, or hereinafter may have resulting from your termination of employment by the company . . .

After signing the agreement, plaintiff was given and cashed a check for $29,229.37, the first installment of his severance pay. Plaintiff contends that after he filed his claim with the Minnesota Department of Human Rights, defendant withheld the unpaid portion of the severance pay in possible retaliation.

Discussion

Minnesota generally favors releases as an effecient means of settling disputes and presumes them to be valid. *Schmitt-Norton Ford, Inc. v. Ford Motor Co.*, 524 F.

Supp. 1099, 1102 (D. Minn. 1981), *aff'd mem.*, 685 F.2d 438 (8th Cir. 1982); *Jeffries v. Gillitzer,* 302 Minn. 402, 225 N.W.2d 17, 20 (1975). A release is only valid, however, if a party has intentionally executed it and received consideration for the party's claim. *Couillard v. Charles T. Miller Hospital, Inc.,* 253 Minn. 418, 92 N.W.2d 96 (1958).

Factors to be considered in determining whether to dismiss a case based on release, include: 1) whether consideration was received; 2) the language of the release itself and whether the plaintiff was permitted to change language in the release; 3) whether plaintiff has an opportunity to consult an attorney before and at the time of settlement; 4) evidence of inequitable conduct, fraud, or misrepresentation in obtaining the release; 5) the existence of economic coersion in obtaining the release; and 6) evidence that the release is against public policy. *See, e.g. Schmitt-Norton Ford, Inc. v. Ford Motor Co.,* 524 F. Supp 1099, 1102-1103 (D. Minn. 1981), *aff'd mem.* 685 F.2d 438 (8th Cir. 1982).

Even viewing the facts in a light most favorable to Lancaster and giving him the benefits of all reasonable inferences, as necessary upon a motion for summary judgment, the court finds defendant is entitled to prevail on the basis of the release. It is undisputed that plaintiff received a first installment of over $29,000 in severance pay, as well as payment of medical insurance for six months. Sufficient consideration exists, when the releasor receives something of value to which the person had no previous right. *Burns v. Northern Pac. Ry. Co.,* 134 F.2d 766 (8th Cir. 1943). No material issue of fact is raised concerning consideration.

The record also indicates that the language of the release is plain and unambiguous. The entire agreement is contained on less than 1½ typewritten pages. The crucial

language is not obscured in fine print nor mired in legal jargon. Moreover, the release clearly encompasses the present suit. Plaintiff argues that statutory rights under the ADEA may never be waived, but offers as authority only a vacated decision. His argument is unpersuasive. Additionally, the record shows that Lancaster had input into the document and that substantial changes were made as a result.

Plaintiff stresses that he had no opportunity to consult an attorney and that he did not know what his rights were. Although the termination did take place around the New Year's holiday, plaintiff could have consulted a lawyer between the time he was notified of termination on Friday, December 30, 1983 and the time he signed the agreement on Wednesday, January 4, 1984. He chose not to. Absence of counsel may be a significant factor in ascertaining intent when the circumstances show an unusual need for legal advice. In this instance, however, the absence of counsel is less telling because the release language is simple. *See Sorensen v. Coast to Coast Stores, Inc.*, 353 N.W.2d 666, 669-670 (Minn. App. 1984). Moreover, the record shows that plaintiff has experience in business and in management, and has signed many contracts in his lifetime.

Plaintiff contends that although he read the agreement and signed it, he did not fully understand his rights. Causes of action existing at the time of the release, whether the party knows of them or not, are within the scope of a release. *Sorensen v. Coast to Coast Stores, Inc.*, 353 N.W.2d 666, 669 (Minn. App. 1984). Similarly, unknown and unexpected consequences from a known injury do not provide a sufficient basis for avoiding a release. *Schmidt v. Smith,* 299 Minn, 103, 216 N.W.2d 669, 672 (Minn. 1974). As the court noted in *Schmitt-Norton:*

> Unilateral mistake concerning the effect of a release is not a basis for setting it aside unless there is evidence that the other party obtained the release by fraud, misrepresentation, or other inequitable conduct.
>
> •••
>
> The plaintiffs do not claim they were misled about the nature of what they were signing but merely that they did not fully understand its implications, which is at most a claim of unilateral mistake, not of fraud, misrepresentation, or inequitable conduct.

524 F. Supp. at 1104. The court in *Sorensen* similarly stated:

> While mutual mistake of fact is a ground for nullifying a release, unilateral mistake is not unless the defendant wrongfully concealed facts from the plaintiff or induced the mistake in some other way.

353 N.W.2d at 670.

In the instant case, all of the facts upon which plaintiff relies for his causes of action occurred before the date of the release and were known to him. At the time he signed the release, he knew he had been terminated and he thought it unjustified. Plaintiff states that he did not understand the implications of the release, but his unilateral mistake of fact is not sufficient to avoid the release absent a showing of fraud, misrepresentation, or other inequitable conduct. He has made no such showing. In fact, plaintiff appears to concede in his memorandum that defendant's conduct did not amount to fraud or misrepresentation. *See* p. 12, Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment. Further, he has not alleged any facts showing such wrongful behavior. Nor do the alleged facts rise to inequitable conduct on defendant's part. Plaintiff did have a chance to meet with [illegible] superiors, to object to certain terms and to consider the release for five days. It is unfor-

tunate that a long-standing employee was suddenly terminated during the holiday season, but these facts alone do not justify overturning a validly-executed release.

Additionally, there is no genuine issue of material fact as to whether the release is void because of economic coercion. To challenge a release on the basis of economic coercion or duress the plaintiff must establish three elements: (1) that he involuntarily accepted the terms of the release, (2) that circumstances permitted only that alternative, and (3) that the defendant created the compelling circumstances through coercive acts. *Schmitt-Norton,* 524 F. Supp. at 1104, *aff'd mem.,* 685 F.2d 438 (8th Cir. 1982). *See also Oskey Gasoline and Oil Co., Inc. v. Continental Oil Co.,* 534 F.2d at 1286 (8th Cir. 1976); *Sorensen,* 353 N.W.2d at 670. Whether the facts are sufficient to constitute duress or coercion is a matter for the court to determine. *Oskey,* 534 F.2d at 1286; *Schmitt-Norton,* 524 F. Supp. at 1104.

In the instant case, plaintiff has not alleged any coercive acts, nor has he shown that no other alternative was available. He could have, for example, rejected the settlement offer and filed an action in court. Plaintiff admits that he was not threatened physically. Nor is it sufficient to allege that duress resulted from plaintiff's economic necessities. *See Oskey Gasoline and Oil Co. v. Continental Oil Co.,* 534 F.2d 1281, 1286 (8th Cir. 1976). The record suggests, moreover, that plaintiff was not financially destitute. *See* Lancaster depo. at 120-21, 123-25.

Finally, the court finds, as a matter of law, that the instant release is not against public policy.

In sum, the record shows that the parties voluntarily agreed to execute the release and that it is valid. While plaintiff is unhappy with the situation and the bargain, the undisputed record demonstrates as a matter of law that he considered the terms of the agreement and went along with

it. The court notes that he is entitled to receive the final installment of his severance pay and that counsel for defendant, at the hearing on this matter, promised to remit that sum to plaintiff promptly should the motion be granted.

Because of this resolution it is unnecessary to address other issues raised by the parties.

ORDER

Accordingly, based on the above and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of defendant for summary judgment is granted, and plaintiff's complaint is dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 27, 1985

/s/ Diana E. Murphy
Diana E. Murphy
United States District Judge